STATE OF MICHIGAN

COURT OF APPEALS

PIONEER STATE MUTUAL INSURANCE COMPANY,

Plaintiff-Appellee,

v

ROBERT G. HOLMES,

Defendant-Appellant,

and

BARTON COLLINS,

Defendant-Appellee.

UNPUBLISHED
October 12, 1999

No. 210340
Osceola Circuit Court
LC No. 97-007617 CK

Before: Bandstra, C.J., and Markman and Meter, JJ.

PER CURIAM.

Defendant Robert Holmes, who injured defendant Barton Collins during a physical altercation, appeals by right from an order granting plaintiff Pioneer State Mutual Insurance Company's motion for summary disposition under MCR 2.116(C)(10). The trial court ruled that plaintiff had no duty to defend or indemnify Holmes in a tort suit filed by Collins because Collins' injury – a broken leg – was a "natural consequence" of Holmes' intentional blow to Collins' face and was therefore subject to plaintiff's policy exclusion for intentional acts. We affirm.

Holmes argues that the trial court should not have granted plaintiff summary disposition because Collins' broken leg was not a "natural consequence" of Holmes' admittedly intentional blow to Collins' face. We review a trial court's grant of summary disposition under MCR 2.116(C)(10) de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). Like the trial court, we look at the entire record, view the evidence in favor of the

nonmoving party, and decide if there exists a material factual issue about which reasonable minds might differ. *Id.*; *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 574 NW2d 314 (1996).

The homeowner's insurance policy issued by plaintiff to Holmes provided the following exclusion from coverage:

> Coverage E – Personal Liability and Coverage F – Medical Payments to Others do not apply to bodily injury or property damage:
>
> a. resulting from any act or omission which is expected or intended by an insured to cause any harm. This exclusion applies whether or not any insured:
>
> (1) intended or expected the result of his or her act or omission so long as the resulting injury or damage was a natural consequence of the intended act or omission.

This language plainly indicated that coverage was precluded for an injury that was the natural consequence of an act intended to cause any harm, *whether or not the insured intended or expected the actual harm inflicted*. Therefore, although whether the insured in this case intended *any* harm is reviewed from a subjective standpoint, see *State Farm Fire & Casualty Co v Fisher*, 192 Mich App 371, 377; 481 NW2d 743 (1991), we conclude that whether the actual resulting harm was a "natural consequence" of the intentional act is reviewed from an objective standpoint. Cf. *Auto-Owners Ins Co v Harrington*, 455 Mich 377, 383; 565 NW2d 839 (1997) (if coverage exclusion applies to injuries expected or intended by an insured, subjective test applies – implying that objective test applies when an exclusion covers injuries regardless of whether the insured expected or intended them).

We first conclude that Holmes' admittedly intentional blow to Collins' head evidenced a subjective intent to cause some type of harm. Indeed, given that Holmes stuck Collins' face at least twice using a closed fist, the only reasonable conclusion is that Holmes intended to harm Collins in some way. We further conclude, after viewing the situation objectively, that Collins' broken leg was indeed the "natural consequence" of the blow to his head. Because the policy does not define the phrase "natural consequence,"[1] we are to interpret the phrase in accordance with its commonly used meaning and in accordance with the reasonable expectations of the parties. *Nabozny v Pioneer State Mut Ins Co*, 233 Mich App 206, 210-211; 591 NW2d 685 (1998). "Natural," in this context, is defined as "happening in the usual course of things." Random House Webster's College Dictionary, p 872. "Consequence" is defined as "the effect, result, or outcome of something occurring earlier." *Id.*, p 281. Thus, an injury was a "natural consequence" of an act if it was the result of the act and it happened in the usual course of things. Moreover, given that we must interpret "natural consequence" in accordance with the reasonable expectations of the parties, *Nabozny, supra* at 211, and given that the policy language agreed to by the parties specifically indicated that an injury need not be expected by the insured in order to be excluded from coverage, a "natural consequence" of an act need not be an *expected* consequence of the act.

The evidence showed that Collins' broken leg occurred in the usual course of things as a result of Holmes' blow to Collins' face – a blow which caused Collins to fall to the ground. There was no

indication that Collins broke his leg before being knocked to the ground, and eyewitnesses saw Collins' bone protruding from his sock only *after* he fell. Therefore, Collins injured his leg as a result of the fall. Moreover, the injury happened "in the usual course of things," since (1) the blow to the head knocked Collins down, (2) the fall caused his leg injury, and (3) the sequence of events was not particularly unusual, given that a blow to the head can easily cause a person to stagger, lose his balance, fall, and break a limb. Accordingly, even though we must view the policy exclusion in favor of the insured, *Auto-Owners, supra* at 383, we nonetheless conclude that reasonable minds could not differ in deciding that Collins' injury fell within the exclusion, and the trial court properly granted plaintiff summary disposition.

This conclusion is reinforced by *State Farm, supra* at 378, and *Fremont Mut Ins Co v Wiechowski*, 182 Mich App 121, 123; 451 NW2d 523 (1989), cases in which this Court held that policy exclusions for expected or intended bodily injuries encompass unintended injuries as long as the offending party intended *some type* of bodily injury. Indeed, the principle espoused in *State Farm* and *Fremont* is particularly appropriate in the instant case, where the policy specifically mandated a coverage preclusion for injuries that were natural consequences of acts intended to cause harm, *whether or not the insured intended or expected* the actual harm inflicted. Under this language, and under *State Farm, supra* at 378, and *Fremont, supra* at 123, insurance coverage was clearly precluded for the injury to Collins' leg, given that Holmes intended to injure Collins' face.[2]

Affirmed.

/s/ Richard A. Bandstra
/s/ Patrick M. Meter

Markman, J. did not particpate.

[1] Holmes argues that because the policy did not define "natural consequence," the policy was ambiguous and must be construed in favor of the insured. However, "the fact that a policy does not define a relevant term does not render the policy ambiguous." *Nabozny v Pioneer State Mut Ins Co*, 233 Mich App 206, 210; 591 NW2d 685 (1998). Moreover, because the clause at issue was a policy *exclusion*, we are required to view it in favor of the insured regardless of whether it was ambiguous. See *Auto-Owners, supra* at 383.

[2] We note that in *Nabozny, supra* at 215-216, this Court held that an ankle injury plaintiff incurred after being intentionally pushed to the ground was not subject to an insurance policy exclusion for intentional acts. *Nabozny* does not mandate reversal in this case for three reasons. First, the *Nabozny* Court focused quite strongly on the fact that the person who caused the injury did not intend to harm the plaintiff *at all* (in contrast to *State Farm, supra* at 378, and *Fremont, supra* at 123, where the perpetrator intended harm of a different nature or intensity from the actual harm inflicted). *Id*. at 215.

Second, the exclusionary clause in *Nabozny* applied to bodily injury "which may be reasonably expected from the intentional . . . acts of an insured." *Id*. at 215. The policy in *Nabozny* did not contain the language in the instant case that precluded coverage for injuries that were natural consequences of acts intended to cause any harm, whether or not the insured intended or expected the harm inflicted. Whether something was a "natural consequence" under the policy in the instant case is sufficiently distinct from whether something was "reasonably to be expected" so as to justify a holding contrary to *Nabozny* in the instant case. Indeed, under the instant policy, something could be a "natural consequence" of an act without necessarily being "reasonably expected." Finally, to the extent that *Nabozny* conflicts with *State Farm*, *supra* at 378, we are obligated to follow *State Farm*. See *People v Young*, 212 Mich App 630, 639; 538 NW2d 456 (1995), remanded on other grounds 453 Mich 976 (1996) (if there exist two conflicting Court of Appeals opinions issued on or after November 1, 1990, we must follow the first opinion on the issue).